



Arkansas

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Two Recent Arkansas Supreme Court Decisions Affect Arkansas Tax Laws

Weiss v. McFadden

On December 9, 2004, the Arkansas Supreme Court issued its decision in *Weiss v. McFadden*, Arkansas Supreme Court Docket No. 04-696. The Court affirmed the order of Pulaski County Circuit Judge Collins Kilgore (Docket No. OT99-3939) awarding state income tax refunds to retirees who were not allowed consideration for state tax paid on contributions to public or private employment-related retirement systems, plans, or programs.

This was the third appeal in this case. In the first appeal, the Supreme Court held that the failure of Ark. Code Ann. § 26-51-307(c) to allow a deduction for the cost of contribution to such retirement plans constituted a direct tax on property in violation of Amendment 47 of the Arkansas Constitution. In the second appeal, the Supreme Court reversed the trial court's decision that the voluntary payment rule did not apply to bar refunds of tax prior to the filing of the lawsuit in 1999.

The third appeal dealt with the trial court's holding that the remedy to be applied for the Amendment 47 violation consisted of a refund of taxes based upon a calculation that would have

allowed class members to recoup all taxes paid upon their cost of contribution, regardless of when the tax was paid or even whether it had been paid at the time of the refund (referred to as the "front-end loaded" method of refund calculation).

The Supreme Court held in a 4-3 decision that the trial court did not err in allowing the "front-end loaded" refund calculation for purposes of refunds not barred by the voluntary payment rule, even though the federal method of determining the amount of cost recovery was used to determine the portion of refunds for tax years prior to 1999 that are barred by the voluntary payment rule.

The attorneys for the parties are working on the logistics for refund calculation and distribution. For federal retirees (the majority of the class), refunds have been calculated using information obtained from the federal Office of Personnel Management. Refund checks for those class members were mailed January 26, 2005. Claim forms are available for the remainder of the class members at the following DFA website, http://www.arkansas.gov/dfa/income_tax/tax_individual.html, in an advertisement in the Arkansas Democrat Gazette, and at all local state revenue offices. These claim forms will allow a class member (whose refund is not automatically calculated from federal information) to provide the

information necessary to calculate any refund that is due.

Taxpayer questions should be directed to class counsel, Greg Campbell or Mark Nichols at g_campbell@alltel.net or (501) 978-4352.

DaimlerChrysler Services North America, LLC v. Weiss and Weiss v. American Honda Finance Corp.

On December 16, 2004 the Arkansas Supreme Court decided two cases concerning the "bad debt refund" issue, upholding the Department's denial of refunds. The cases were *DaimlerChrysler Services North America, LLC v. Weiss* and *Weiss v. American Honda Finance Corp.* DaimlerChrysler and Honda are lenders who finance the purchase of motor vehicles. The companies frequently lend the amount of the motor vehicle sales tax to the vehicle purchasers, along with the vehicle purchase price. The companies are entitled to claim as a bad debt for income tax purposes the amount of any debt that defaulting borrowers fail to pay, including the part of the debt that represents the motor vehicle sales tax.



Vendors who finance the purchase of goods and are required to remit the sales tax for the month of the transaction are allowed a "bad debt" credit or refund of the sales tax that remains unpaid when a customer defaults. Chrysler and Honda claimed refunds under this provision. The Department denied the refunds and the companies sued.

On appeal the Arkansas Supreme Court upheld the denial of the refunds. The basis for the denial was that companies who finance the sale of motor vehicles, including the sales tax, are not "taxpayers" for purposes of the bad debt refund statute, because the lenders are not required to report and remit motor vehicle sales tax. The persons liable for motor vehicle sales tax are the purchasers of the vehicles.

Possible DFA Refund in Class Action Case of *Fulmer v. Weiss*

The Pulaski County Circuit Court has approved a settlement in the class action case of *Fulmer v. Weiss*. The Court entered an Order approving the parties' agreed plan of refund for eligible class members. **Class members are individual married taxpayers whose joint Arkansas income tax refunds were paid to the IRS for federal tax debts owed by only one of the spouses for tax years 1991 through 1997.**



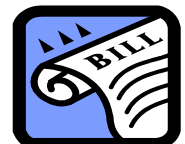
The court has ordered that refunds be made to taxpayers who did not owe the IRS but filed Arkansas Individual Income Tax returns jointly or married filing separately with a spouse who owed the IRS, and the refund of the couple was paid to the federal government pursuant to the IRS's blanket levy for the federal tax liability of only one spouse. Claims for refund must be filed on an approved claim form between January 15, 2005 and August 15, 2005. Claimants may be required to furnish documentation to support the claim for refund. In computing the refund allowable to a claimant, the DFA shall allocate the refund based on information supplied on the original return and the claim form. Interest will be paid on these refunds from the original due date of the return until the day the refund is processed.

Claim forms and filing information are available at:

http://www.arkansas.gov/dfa/income_tax/tax_individual.html, or claimants may call 1-800-882-9275 (Outside Pulaski County and in Arkansas) or 501-682-1100 (Inside Pulaski County or out of Arkansas), or visit the local Revenue Office.

Internet Tax Freedom Act

Differences between H.R. 49 and S. 150 were finally resolved, and the long congressional standoff ended December 3, 2004. The House passed the Senate's version of the moratorium, which enabled President



Bush to sign S. 150 into law. This law extends the ban on Internet access taxation until November 1, 2007. It also restricts the definition of "Internet access," which eliminates the possibility of a *permanent* ban on the taxability of telecommunications, more specifically voice over Internet protocol (VOIP), and prohibits Internet access taxes and "multiple and discriminatory taxes." The bill does not count VOIP as a type of Internet access, and it can still be taxed. If this legislation had not been enacted by Congress, Arkansas' revenue dollars could have decreased approximately \$30 to \$70 million per year.

New Rules 2004-6 and 2004-7 Adopted

Rule 2004-6: This Rule provides (1) uniform procedures for use by taxpayers when seeking a tax refund in the manner provided by current law and (2) a mechanism allowing a sales tax refund to be paid directly to the customer following assurance from the vendor that the sales tax collected by the vendor from the customer has been paid to the state. This Rule was adopted November 15, 2004, and can be accessed at the following website:

http://www.arkansas.gov/dfa/excise_tax_v2/et_index.html

The Claim for Refund Form can be accessed under the "Form Name" section at the following website.

http://www.arkansas.gov/dfa/excise_tax_v2/et_s_u_forms.html

Rule 2004-7: This rule provides a method and a format to comply with the requirements for an application for the cancellation of title or manufacturer's certificate of origin (MCO), which includes completing Form 10-318 along with the certificate of title or MCO. All owners and all parties having a mortgage, lien or security interest must sign the application. The Department of Finance and Administration will approve the application for cancellation, cancel the title or MCO, and notify the owner, lending agency, or other entity listed on the application. This Rule was adopted December 16, 2004. The Application for Cancellation of Title or MSO on a Manu-

factured Home can be viewed at the following website:

http://www.arkansas.gov/dfa/dfa_vehicles.html

Office of Child Support (OCSE) Accepts Electronic Payments

The Office of Child Support Enforcement has created a new system called OCSE Web Pay that will assist parents and employers by providing instant access to child support records and to submit support payments using a credit card or electronic check. There is a nominal processing fee assessed for paying online. First time users need the case number, their social security number, and a valid e-mail account to complete the registration process. Additional information is available at:

http://www.arkansas.gov/dfa/dfa_child_support.html

Reminder: State law (Act 1276 of 1997) requires employers to report newly hired and rehired employees' information to the Arkansas New Hire Reporting Center with the Employment Security Department. Forms can be accessed at the following website under "For Employer":

<http://www.arkansas.gov/esd/>

Sales Tax Business Closures Update

Act 46 of the 2nd Extraordinary Session provided for the closure of businesses that failed to report and remit sales and use taxes. The Act states that if a taxpayer fails to file or pay sales tax for any three months within a 24-month period beginning July 1, 2004, a notice will be delivered or mailed by certified mail notifying the taxpayer that the business will be closed in five days unless arrangements are made to pay the delinquent tax.

Initially there were 3,800 businesses eligible for the business closure. Many businesses responded to notices that were delivered or mailed. Forty business closure letters were



issued. Wild River County, located in North Little Rock, was the first business to be closed under Act 46; however, a payment arrangement was later entered into allowing it to reopen for business. There is a possibility that 80 additional businesses could be closed over the next few weeks. DFA investigators will contact each of the additional 80 business owners with a personal visit or a phone call before the business closure order is issued. Investigators have worked through approximately 50 percent of the eligible accounts and continue to contact the business owners who are on the business closure list. The primary goal is for delinquent taxpayers to work out a payment arrangement for the months in arrears.

CHANGES IN SALES & USE TAX

Please Call (501) 682-7104 For Periodic Updates Regarding Local Sales and Use Taxes

http://www.arkansas.gov/dfa/excise_tax_v2/st_index.html

Name	Code	Effective Date	%	Recent Action
Almyra	01-05	1/1/05	1.00	Enacted
Little Flock	04-17	1/1/05	1.00	Enacted
Vilonia	23-04	1/1/05	2%	Increase
Desha County	21-00	2/1/05	1.50	Decrease

Internet Information

Business and Personal Tax Page

http://www.arkansas.gov/dfa/dfa_taxes.html

Telephone Information

Corporate Income Tax	(501) 682-4775
Taxpayer Assistance for Individual Income Tax	(501) 682-1100 1-800-882-9275
Automated Refund Inquiry & Tele-tax Information	(501) 682-0200 1-800-438-1992
Sales and Use Tax	682-1895
Taxpayer Assistance Office	501-682-7751

Calendar of Due Dates

01/13/05—4th Qtr. Individual estimated income tax (Based on calendar year filer) (EFT filers only); Employee monthly W/H tax, for prior month (EFT filers only);

01/18/05—4th Qtr. Individual estimated income tax (Based on calendar year filer); Employee monthly W/H tax, for prior month; Miscellaneous tax (except Severance taxes)

01/20/05—Sales & Use Tax

01/25/05—Motor fuel tax (except IFTA); Severance tax;

01/31/05—Employee withholding tax report for prior year (Annual filer only); IFTA

02/14/05—Employee monthly W/H tax, for prior month (EFT filers only)

02/15/05—Employee monthly W/H tax, for prior month; Miscellaneous tax (except Severance taxes)

02/22/05—Sales & Use Tax

02/25/05—Motor fuel tax (except IFTA); Severance tax;

02/28/05—Employer's Annual Reconciliation of Income Tax Withheld (Including W-2's & 1099's)

03/14/05—Employee monthly W/H tax, for prior month (EFT filers only);

03/15/05—Employee monthly W/H tax, for prior month; AR income tax returns ("C" or "S" corporation, check the box partnership, LLC) (Based on calendar year filers; return due date 2½ months after end of tax year.); Miscellaneous tax (except Severance taxes)

03/21/05—Sales & Use Tax

03/25/05—Motor fuel tax (except IFTA); Severance tax

Reminder: Deadline for Filing State Income Tax Returns is April 15th.



The Arkansas State Revenue Tax Quarterly is a publication of the Taxpayer Assistance Office. The newsletter is produced and distributed electronically to tax professionals, businesses, and organizations operating in Arkansas. To be added or deleted from the e-mail list, contact Jan Moore, phone (501) 682-7751, write to Taxpayer Assistance Office, Ledbetter Building, Room 2460, P. O. Box 1272, Little Rock, Arkansas 72203-1272, or send an e-mail to jan.moore@rev.state.ar.us.